



**Kivuthi v Mulinge & 2 others (Environment and Land Appeal E007 of 2022)  
[2023] KEELC 21610 (KLR) (14 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21610 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
ENVIRONMENT AND LAND APPEAL E007 OF 2022  
LG KIMANI, J  
NOVEMBER 14, 2023**

**BETWEEN**

**KINYAMASYO KIVUTHI ..... APPELLANT**

**AND**

**KASENGU MULINGE ..... 1<sup>ST</sup> RESPONDENT**

**WAMBUA NZINGA ..... 2<sup>ND</sup> RESPONDENT**

**MUSYOKA NZANGI ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Ruling of the Honourable P.M Mayova, delivered  
in Mutomo Land Case Number E003 of 2021 delivered on 28th April 2022)*

**JUDGMENT**

1. Before the Court is an Appeal against the ruling of the Honourable P.M Mayova, delivered in Mutomo Land Case Number E003 of 2021 on 28<sup>th</sup> April 2022. The Amended Memorandum of Appeal dated 23<sup>rd</sup> May 2022 sets forth the following grounds:
  1. That the Learned Magistrate erred in law by allowing an Interlocutory Judgment to stand in a land matter where there was no claim for liquidated damages.
  2. That the trial magistrate erred in law and fact in finding that the appellant's application dated 11<sup>th</sup> November 2022 lacks merit.
  3. That the trial magistrate erred in law and fact in finding that the appellant was regularly served.
  4. That the trial magistrate erred in law and fact in agreeing with the averments of the court process server on the face of them without requiring he present a valid process server licence to verify whether he was indeed a licenced process server.



5. That the trial magistrate erred in law and fact in failing to direct his mind properly on the principles governing setting aside of ex parte judgement and hence misdirected himself in the exercise of his discretion.
  6. That the learned trial magistrate misdirected himself in law and fact by relying on the consent of the Land Adjudication Officer yet the Adjudication register had already become final before the suit was filed hence the said Land Adjudication Officer lacked jurisdiction and/or mandate to issue such consent.
  7. That the learned trial magistrate misdirected himself in law and fact by addressing himself to the issue of land adjudication whereas the adjudication register had already become final by the time the suit was filed, and a Title deed in respect of the suit land issued in the name of the appellant.
  8. That the learned trial magistrate erred in law and fact by failing to appreciate that the appellant was the registered proprietor of parcel Number Mutomo/Mwala "B"/197 and as such, cancellation of his title deed would be improper unless a certified copy of the title deed had been filed in court by the respondents.
  9. That the learned trial magistrate erred in law and fact by allowing the prayer for the deletion of the appellant's name from Plot No. 197 Mwala B Adjudication Section whereas no certified copy of the adjudication record had been filed in court by the respondent s.
  10. That the learned trial magistrate erred in law and fact by disregarding the appellant's assertion that he had a good and reasonable defence on the ground that the said defence was not annexed to the appellant's application dated 11<sup>th</sup> November 2021.
  11. That the learned trial magistrate erred in law and fact by not appreciating the overriding objective of Section 1A & 3A of the Civil Procedure Act & Article 159 (2) (d) & (e) of the Constitution and the right to a fair hearing which is guaranteed under Article 50 (1) of the constitution encompasses notifying the appellant of all the stages of proceedings before the trial court.
  12. That the learned trial magistrate erred in law and fact by failing to appreciate that disputes ought to be determined on merits and that lapses ought not necessarily to debar a litigant from pursuing his rights.
2. The Appellant prays that the appeal be allowed and the ruling dated 28<sup>th</sup> April 2022 in its entirety be set aside and the matter be remitted for re-hearing before a different court or upon such terms as this court deems fair and just and that costs of the appeal be provided for.
  3. The suit before the trial court was instituted vide Plaint dated 1<sup>st</sup> February 2021 where the plaintiffs were the respondents herein. The plaintiffs claimed to have entered into the sale of part of the unregistered parcel of land that was later registered as Plot No.197 Mwala 'B' Adjudication Section at a purchase price of Ksh. 150,000 in default of which the defendant was to vacate the land. The defendant failed and/or refused to pay the purchase price and also refused to vacate the land. The Plaintiffs, therefore, prayed for a declaration that they are the owners of Land Parcel Number 197 Mwala 'B' Adjudication Section and for the name of the Defendant to be cancelled from being the owner of the suit land. They also prayed for an order for eviction against the Defendants and demolition of all the houses and structures of the Defendants in parcel No.197 Mwala B Adjudication Section as well as costs and interests of the suit.



4. The Plaintiffs applied for interlocutory judgment stating that the Defendant was served with summons to enter appearance but failed to comply within the prescribed time. Interlocutory judgment was entered on the 7<sup>th</sup> April 2021 as prayed for in the plaint and the matter was fixed for formal proof hearing on 12<sup>th</sup> August 2021. The judgment was delivered on 28<sup>th</sup> October 2021 in favour of the Plaintiffs.
5. The Defendant filed an application under Certificate of Urgency dated 11<sup>th</sup> November 2021, seeking the following orders;
  1. Spent
  2. That there be a stay of execution of the ex parte judgement entered on 28<sup>th</sup> of October 2021 against the defendant/applicant pending the hearing and final determination of this application
  3. That the exparte judgement entered on the 28<sup>th</sup> day of October 2021 and subsequent orders granted against the defendant/applicant set aside the defendant/applicant be granted leave to file their memorandum of appearance and defence out of time.
6. The application was supported by the grounds on the face of it and the averments in the affidavit of the defendant. The defendant stated that he was never served with copies of the plaint and summons to enter appearance and thus he was condemned unheard. He stated that he learnt of the existence of the suit on 28<sup>th</sup> October 2021 when he saw his name on the cause list when he was coming for another case and that he later followed up with the customer care desk where he was informed that the case had been concluded.
7. The defendant further stated that he learnt of the existence of the affidavit of service purporting to have been sworn by a process server but denied meeting anyone purporting to serve him with summons to enter appearance and the pleadings thereof.
8. He further claimed that he had a good and reasonable defence to the plaintiff's claim and it is only fair and just that it be put on record to enable the court to arrive at a just and fair decision on merit. He stated that the application had been made without undue delay from the date of knowing of the existence of the suit. He claimed that if the application was not granted he would be denied an opportunity to be heard.
9. The plaintiffs filed a replying affidavit sworn by the 1<sup>st</sup> plaintiff Kasengu Mulinge stating that the application lacked merit and the defendant was lying to the court. He stated that on 1<sup>st</sup> March 2021, he accompanied the process server Moses Mutie and that he was the one who pointed out the defendant to the process server. The plaintiff stated that he was left in a car while the process server went into the rental plot where they had found the defendant. They stayed for about 30 minutes and thereafter the process server came out with the original paper signed by the defendant. He stated that the process server filed an affidavit of service on 8<sup>th</sup> March 2021 and there is no good reason why the defendant did not file a defence.
10. He further deponed that the defendant did not have a strong or veritable defence to the claim and he had not attached to his application a draft defence. The plaintiff stated that the dispute started on 26<sup>th</sup> June 2016 at the chief's office Mutomo whereby there are a series of agreements between the plaintiffs and the defendant up to 16<sup>th</sup> January 2020 and the defendant failed to honour the agreements and pay as per the annexed series of agreements.



11. He further stated that the discretion of the court to set aside judgment was intended to be exercised to avoid injustice and hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.
12. The trial court directed that the process server be availed for cross-examination and the proceedings of the court show that the process server attended court on 24<sup>th</sup> March 2022 and testified as to how he served the summons on the plaintiff in the presence of his wife whom he pointed out in court and that the defendant signed on the said summons.
13. The Court delivered its ruling on 28<sup>th</sup> April 2021 noting that though the defendant denied service the court believed the process server appeared sincere and honest. The court found that the defendant came to court with unclean hands and he was lying under oath. The court observed that it would have exercised its discretion had the defendant been honest and cited inadvertent error, accident or excusable mistake. The court further found that the defendant deliberately sought to obstruct and delay justice.
14. The court dismissed the application with costs to the Plaintiffs. This ruling is the subject matter of this appeal.

### **Appellant's written submissions**

15. Counsel for the Appellant submitted on the issue of whether the Appellant was served with summons to enter appearance, and whether the Plaintiffs were entitled to ex-parte proceedings and judgment. He stated that the affidavit of service relied upon to prove service of summons was defective as it does not disclose the time of service which is a requirement under Order 5 rule 15(1) of the Civil Procedure Rules. He relied on the ruling of Justice Mbogholi Msagha in *Mary Rose Adhiambo Meja v Reginald Major Omulo* (2000) eKLR.
16. Counsel also submitted that no practising license for the Process server was filed in Court and that this failure should mean that he was not authorized to practice as such for the year 2021. He cited the case of *Bernard Nyaga Kimotho v Njuguna Daniel Ng'ang'a* (2012) eKLR on the matter.
17. The Appellant's position is that the interlocutory judgment and the subsequent ex parte judgment were irregular and that courts have always set aside irregular judgments as a matter of right and cited the case of *James Kanyiita Nderitu & another vs Marios Philota Ghikas & another*, Civil Appeal No. 6 of 20115 eKLR.
18. The second issue that counsel for the Appellant submitted was that the suit land being a registered parcel of land under the Registered *Land Act* CAP 300 Laws of Kenya, the consent of the Land Adjudication Officer relied on by the sitting magistrate was null and void and that instead, a certified copy of the title should have been presented before court as required by Order 21 rule 6 of the Civil Procedure Rules. It was also mentioned that the Respondents did not obtain consent from the other family members to commence these proceedings in the lower court, the suit land being family land.
19. The third issue that counsel for the Appellant submitted is that interlocutory judgments should not be issued where no claim of a liquidated demand or pecuniary damages exists, quoting from Order 10 rule 4(1) and (2) of the Civil Procedure Rules (2010) and they relied on the precedent in the case of *David Kiptanui Yego & 134 others v Benjamin Rono & 3 others* [2021] eKLR.
20. It is therefore the Appellant's case that the judgment entered by the trial court was irregular and he prays that the lower court ruling be set aside and/or quashed to pave the way for a retrial.



## Respondent's submissions

21. Counsel for the Respondents submitted that the issue of service was dealt with when the process server was cross-examined and stated that they knew the defendant well. Counsel submitted that the defendant intentionally failed to enter appearance, hence prompting the court to enter interlocutory judgment.
22. They also submitted that a defective affidavit cannot be struck out due to a technicality, relying on the provision of Order 19 Rule 7 of the Civil Procedure Rules (2010). They also submitted that the process server produced a valid license in Court.
23. The Respondents also submitted that the Defendant did not attach a credible draft defence for the lower court's consideration and he cannot purport to have a good defence which raises triable issues.
24. On the law applicable to the suit land, the Respondents submit that at the time they entered into the agreement, the suit land had not been surveyed, therefore the land falls under the [Land Adjudication Act](#) the consent from the Land Adjudication officer relied upon was valid. They relied on the case of Benjamin Okwaro Estika v Christopher Anthony Ouko & Another (2013) eKLR.
25. The second issue that Counsel for the Respondents submitted is that the interlocutory judgment entered by the Lower Court satisfies Order 10 of the Civil Procedure Acts since the Defendant failed to enter an appearance after being served with summons as it is procedure relying on the holding in the case of Haile Selassie Avenue Development Co. Ltd vs Josephat Muriithi & 11 others High Court Civil Case No. 2012 of 2001.
26. Counsel for the Respondents therefore submits that the Appellant herein did not comply with the rules of procedure in his application to set aside the interlocutory judgment and that the Appeal should be dismissed with costs.

## Analysis and Determination

27. A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment or ruling and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity to see and hear the witnesses first-hand. This duty was stated in *Selle & Another v Associated Motor Boat Co. Ltd. & others* and *Peters v Sunday Post Limited*.
28. Though the appellant set out 12 grounds of appeal in the Amended Memorandum of Appeal, in submissions the said grounds were reduced into three issues for determination and all parties submitted on the said issues as follows;
  1. Whether the appellant was served and if so whether the plaintiffs were entitled to ex parte proceedings.
  2. Whether the suit parcel is a registered parcel of land, falls under the [Land Adjudication Act](#) Chapter 280 Laws of Kenya.
  3. Whether an interlocutory judgement can be entered where no claim liquidated demand or pecuniary damages exists.
29. The court will seek to analyse and determine the said issues as drawn by the parties.



**1. Whether the appellant was served and if so whether the plaintiffs were entitled to *ex parte* proceedings.**

30. Counsel for the Appellant submitted that the affidavit of service was defective since it did not disclose the time when service was effected. He relied on the provisions of Order 5, Rule 15 (1) of the Civil Procedure Rules and the ruling of Justice Mbogholi Msagha in the case of *Mary Rose Adhiambo Meja v Reginald Major Omulo*(2000) eKLR.
31. Order 5 Rule 15 of the Civil Procedure Rules (2010) provides that:
- “The serving officer in all cases in which summons has been served under any of the foregoing rules of this Order shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons. The affidavit of service shall be in Form No 4 of Appendix A with such variations as circumstances may require.”
32. Counsel for the plaintiffs on the other hand submitted that the defendant was properly served and an affidavit of service was filed. He emphasized the fact that the defendant was personally known to the process server and that the defendant signed the copies of the documents served. Indeed, the process server was called to court to testify.
33. The court has looked at the averments made by the appellant in the application dated 11<sup>th</sup> November 2021, the supporting affidavit, the affidavit of the process server and the respondents replying affidavit and the proceedings of the court when the process server was called to testify and be cross-examined.
34. The court notes the first challenge to the process server was whether he had a practising licence in court. This challenge was never raised before the trial court. However, it is noted from the proceedings before the trial court the process server produced a valid license. On the 2<sup>nd</sup> issue, the defendant did not deny the assertion by the process server that they knew each other with the defendant. Indeed, during cross-examination, it came out that they were long-time friends.
35. The authority of *Mary Rose Adhiambo Meja v Reginald Major Omulo* (supra) cited by the appellant's Counsel on the time of service is quite distinguishable from the current case since in that case, the court noted that on top of not stating the time of service the process server did not know the person he was to serve and he was not accompanied by anyone who knew the said person. The process server also did not state how he reached the applicant's home and whether he knew the home before the date of service.
36. In the court's view, all these factors are to be looked at together in concluding whether there was proper service. In the present case, the process server stated that he was accompanied by one of the respondents herein who pointed out the defendant to him notwithstanding that he knew the appellant.
37. The other issue is that the appellant is said to have signed on the back of the copies of the documents that he received. In the application before the trial court, the appellant did not deny seeing the signatures on the copies of the documents mentioned in the affidavit of service and he did not deny that the said signature belonged to him and indeed he was completely silent on the said signatures.
38. The affidavit of service is further to be looked at together with the evidence adduced in court by the process server where he showed to the court the signature of the defendant and confirmed that the defendant received all the court documents.



39. The trial court had the benefit of hearing, seeing and observing the process server and the defendant and the said court believed the process server who appeared to the court to be sincere and honest. The court found that the defendant came to court with unclean hands and he was lying under oath.
40. In the court's view, there is no sufficient reason given by the appellant that would cause this court to find differently from the finding of the trial court. This court is satisfied by the evidence presented before the trial court that the defendant was indeed served with the summons and all court documents as stated by the process server.
41. Counsel for the Appellant submitted that this was an irregular judgment and that the trial court should have set it aside, relying on the holding of the Court of Appeal in *James Kanyiita Nderitu & Another v Marios Philotas Ghikas & Another* [2016] eKLR.

“We have already emphasized that once an irregular default judgment is brought to the notice of the court, the court will set it aside as a matter of right and that the court may set aside such judgment even on its own.”

42. In the present case, the court finds that the defendant was properly served.

**2. Whether the suit parcel is a registered parcel of land, falls under the *Land Adjudication Act Chapter 280 Laws of Kenya***

43. The Appellant submitted that the *Land Adjudication Act* CAP 284 does not apply to the suit land since the same is registered land. Counsel for the appellant submitted that title to the suit land was issued on 5<sup>th</sup> July 2018 3 years before the suit was filed. Counsel attached to the submissions a copy of the title deed and some other documents.
44. The court has perused the trial court record and noted that the documents attached to the submissions and marked as KK1 and KK2 were not part of the trial court record either through the application dated 11<sup>th</sup> November 2021, the replying affidavit or the documents produced during the hearing. The said documents and reference to them in the submissions amount to Counsel testifying from the bar. The said documents are not properly before the court and the same are hereby expunged from the court record.
45. In the court's view whether or not the land herein was registered land or land that was subject to adjudication was an issue that could have been determined at the trial. The said issue ought to have been brought to the attention of the trial court at the time of hearing of the application for setting aside judgment as part of the appellant's demonstration of a good defence to the Respondent's claim. The said issue was not raised before the trial court and the same cannot be determined at this stage.
46. The court observes that the appellant did not demonstrate to the trial court that he had a good defence to the claim by the respondents. He did not attach to his application a draft defence and neither did he indicate in the supporting affidavit what his defence to the respondent's claim was. Such a demonstration could have swayed the trial court to exercise its discretion in favour of the appellant. The principles of setting aside ex parte judgments are well established. In the case of *Esther Wamaitha Njihia & two others vs. Safaricom Ltd*, the court citing relevant cases on the issue held inter alia:-

“the discretion is free and the main concern of the courts is to do justice to the parties before it (see *Patel vs E.A. Cargo Handling Services Ltd.*) the discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who deliberately sought, whether by evasion or



otherwise, to obstruct or delay the cause of justice (see *Shah vs. Mbogo*. The nature of the action should be considered, the defence if any should also be considered; and so should the question as to whether the plaintiff can reasonably be compensated by costs for any delay bearing in mind that to deny a litigant a hearing should be the last resort of a court. (See *Sebei District Administration vs Gasyali*. It also goes without saying that the reason for failure to attend should be considered.”

**Whether an interlocutory judgement can be entered where no claim liquidated demand or pecuniary damages exists.**

47. Having found that the defendant was properly served, the question that arises is whether the plaintiffs were entitled to interlocutory judgment in default of defence as was entered into by the trial court on 7<sup>th</sup> April 2021.

48. Entry of default judgment is provided for under Order 10 rules 4, 5, 6 and 7 of the Civil Procedure Rules. It is important to set out the full text of the said provisions for the proper understanding of their scope, extent of application and relevance. The said provisions are as follows:

“ 4(1) Where the plaintiff makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants for any sum not exceeding the liquidated demand together with interest thereon from the filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.

(2) Where the plaintiff makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.

5. Where the plaintiff makes a liquidated demand with or without some other claim, and there are several defendants of whom one or more appear and any other fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against any defendant failing to appear in accordance with rule 4, and execution may issue upon such judgment and decree without prejudice to the plaintiff's right to proceed with the action against such as have appeared.

6. Where the plaintiff is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be.

7. Where the plaintiff is drawn as mentioned in rule 6 and there are several defendants of whom one or more appear and any other fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against the defendant failing to appear, and the damages or the value of the goods and the damages, as the case may be, shall be assessed at the same



time as the hearing of the suit against the other defendants unless the court otherwise orders.”

49. The plaint dated 1<sup>st</sup> February 2021 sought a declaration that the plaintiffs were the owners of land parcel number 197 Mwala ‘B’ Adjudication Section and the name of the defendant be cancelled from being the owner of the suit land, an order for eviction against the defendant and demolition of all the houses and structures of the defendants in parcel No.197 Mwala B Adjudication Section.
50. The said prayers show that the claim was not for liquidated damages as provided under the above rules 4 and 5. The claim is also not for pecuniary damages or detention of goods as provided under rules 6 and 7. This is thus not a case where interlocutory judgment could be applied for and/or entered into. In the case of Apollo Muinde & 2 others v Ernest Oyaya Okemba [2019] eKLR it was held as follows:

“The claim before this court was not one seeking pecuniary damages and neither was it one that was a claim for detained goods. It was a case seeking a declaration of ownership of land and a mandatory injunction. Those are not prayers upon which one can apply for interlocutory judgment. In a situation where no appearance is filed to such a suit or an appearance is filed and no defence is filed within the specified period, the avenue of the plaintiff is to apply for a date for hearing, and even then, since he has no interlocutory judgment in his favour, he needs to serve the defendant with a hearing notice, unless the court orders otherwise, for the matter will be proceeding for full hearing on merits and the defendant needs to be informed of this and opt whether to attend or not. If the defendant has made an appearance, then clearly, he must be served through his counsel, if he has one, or if in person, he must be personally served. “Formal proof” cannot be undertaken in a case where one claims a declaration of ownership of land or is seeking orders of permanent and/or mandatory injunction or such other related claims.”
51. The proceedings before the trial court show that upon entering interlocutory judgment it was directed that the matter proceed for formal proof on various dates. The case finally proceeded on 12<sup>th</sup> August 2021. The court finds that the procedure adopted by the trial court was irregular in that the interlocutory judgement entered is not provided for in law. It is further found that the formal proof conducted by the court was irregular since the court proceeded on the assumption that judgment on liability had been entered at the interlocutory stage.
52. The court has considered the fact that the trial court cannot be faulted for finding that the appellant had been served with summons to enter appearance and failed to do so and that he had not shown that he had a good defence to the respondent's case. However, the procedure adopted by the trial court after determining that the appellant was properly served and he did not file his defence, was irregular as the same is not provided for in law and the same cannot be allowed to stand. In the court's view, the trial court ought to have conducted a full trial and not entered interlocutory judgment and subsequently conducted a formal proof.
53. The court finds that in the circumstances of this case, it will be fair and just to allow the appeal but to award the costs of this appeal to the respondents since the appellant failed to enter appearance and file a defence. In the case of Shah –vs- Mbogo (1967) EA 166 the court of



appeal established the guiding principles that a court needs to consider in an application to set aside an *ex parte* judgment. The court stated thus:-

“Firstly, there are no limits or restrictions on the judge’s discretion to set aside except that if the judge does vary the judgment he does so on such terms as may be just.

The main concern of the court is to do justice to the parties, and the court will not impose conditions in itself to fetter the wide discretion given to it by the rules. Secondly, the discretion to set aside is intended to be so exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not designed to assist the person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”

54. The court is of the view that to do justice to the parties the following orders be made;
1. The appeal herein be and is hereby allowed.
  2. The Ruling of the Honourable P.M. Mayova, delivered in Mutomo Land Case Number E003 of 2021 on 28<sup>th</sup> April 2022 be and is hereby set aside.
  3. The application before the trial court dated 11<sup>th</sup> November 2021 be and is hereby allowed in terms of prayer 3 and the appellant’s defence to be filed within 7 days.
  4. This suit be remitted back to the trial court for hearing and final determination.
  5. Costs of this appeal are to be paid by the appellant to the respondents

**DELIVERED, DATED AND SIGNED AT KITUI THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HON. L. G. KIMANI**

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**ENVIRONMENT AND LAND COURT JUDGE - KITUI**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

**The ruling was read in open court and virtually in the presence of:**

Musyoki Court Assistant.

Kathangu for the Appellant

Mwinzi for the Respondent

